CURTIS R. TINGLEY (SBN 112322)
ctingley@tingleylawgroup.com
STEPHEN D. COLLINS (SBN 277482)
scollins@tingleylawgroup.com
KEVIN W. ISAACSON (SBN 281067)
kisaacson@tingleylawgroup.com
TINGLEY LAW GROUP, PC
10 Almaden Boulevard, Suite 960
San Jose, California 95113
Telephone: (408) 283-7000
Facsimile: (408) 283-7010

Attorneys for Defendant
CAPTAIN DAVE, INC.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION – LOS ANGELES

VETERAN INSTINCT, LLC,

Plaintiff,

v.

MAJOR SURPLUS AND SURVIVAL, INC. dba VOODOO TACTICAL; and CAPTAIN DAVE, INC.,

Defendants.

CASE NO. CV17-01222 JAK JC

ANSWER TO COMPLAINT

DEMAND FOR JURY TRIAL

COMES NOW Defendant CAPTAIN DAVE**,** INC. (hereinafter "DEFENDANT"), to herewith answer the Complaint:

1. Answering Paragraph 1 of Plaintiff's Complaint, DEFENDANT is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and, on that basis, denies the allegations contained therein.

2. Answering Paragraph 2 of Plaintiff's Complaint, DEFENDANT is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and, on that basis, denies the allegations

contained therein.

3. Answering Paragraph 3 of Plaintiff's Complaint, DEFENDANT is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and, on that basis, denies the allegations contained therein.

4. Answering Paragraph 4 of Plaintiff's Complaint, DEFENDANT is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and, on that basis, denies the allegations contained therein.

5. Answering Paragraph 5 of Plaintiff's Complaint, DEFENDANT is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and, on that basis, denies the allegations contained therein.

6. Answering Paragraph 6 of Plaintiff's Complaint, DEFENDANT is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and, on that basis, denies the allegations contained therein.

7. Answering Paragraph 7 of Plaintiff's Complaint, DEFENDANT is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and, on that basis, denies the allegations contained therein.

8. Answering Paragraph 8 of Plaintiff's Complaint, DEFENDANT denies the allegations contained therein.

9. Answering Paragraph 9 of Plaintiff's Complaint, DEFENDANT denies the allegations contained therein.

10. Answering Paragraph 10 of Plaintiff's Complaint, DEFENDANT is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and, on that basis, denies the allegations

contained therein.

11. Answering Paragraph 11 of Plaintiff's Complaint, DEFENDANT is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and, on that basis, denies the allegations contained therein.

12. Answering Paragraph 12 of Plaintiff's Complaint, DEFENDANT denies the allegations contained therein.

13. Answering Paragraph 13 of Plaintiff's Complaint, DEFENDANT is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and, on that basis, denies the allegations contained therein.

14. Answering Paragraph 14 of Plaintiff's Complaint, DEFENDANT is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and, on that basis, denies the allegations contained therein.

15. Answering Paragraph 15 of Plaintiff's Complaint, DEFENDANT is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and, on that basis, denies the allegations contained therein.

16. Answering Paragraph 16 of Plaintiff's Complaint, DEFENDANT is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and, on that basis, denies the allegations contained therein.

17. Answering Paragraph 17 of Plaintiff's Complaint, DEFENDANT is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and, on that basis, denies the allegations contained therein.

18. Answering Paragraph 18 of Plaintiff's Complaint, DEFENDANT is

without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and, on that basis, denies the allegations contained therein.

19. Answering Paragraph 19 of Plaintiff's Complaint, DEFENDANT is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and, on that basis, denies the allegations contained therein.

20. Answering Paragraph 20 of Plaintiff's Complaint, DEFENDANT is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and, on that basis, denies the allegations contained therein.

21. Answering Paragraph 21 of Plaintiff's Complaint, DEFENDANT is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and, on that basis, denies the allegations contained therein.

22. Answering Paragraph 22 of Plaintiff's Complaint, DEFENDANT is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and, on that basis, denies the allegations contained therein.

23. Answering Paragraph 23 of Plaintiff's Complaint, DEFENDANT denies the allegations contained therein.

24. Answering Paragraph 24 of Plaintiff's Complaint, DEFENDANT denies the allegations contained therein.

25. Answering Paragraph 25 of Plaintiff's Complaint, DEFENDANT denies the allegations contained therein.

26. Answering Paragraph 26 of Plaintiff's Complaint, DEFENDANT denies the allegations contained therein.

27. Answering Paragraph 27 of Plaintiff's Complaint, DEFENDANT

denies the allegations contained therein.

28. Answering Paragraph 28 of Plaintiff's Complaint, DEFENDANT denies the allegations contained therein.

29. Answering Paragraph 29 of Plaintiff's Complaint, DEFENDANT denies the allegations contained therein.

30. Answering Paragraph 30 of Plaintiff's Complaint, DEFENDANT denies the allegations contained therein.

31. Answering Paragraph 31 of Plaintiff's Complaint, DEFENDANT denies the allegations contained therein.

32. Answering Paragraph 32 of Plaintiff's Complaint, DEFENDANT denies the allegations contained therein.

33. Answering Paragraph 33 of Plaintiff's Complaint, DEFENDANT denies the allegations contained therein.

34. Answering Paragraph 34 of Plaintiff's Complaint, DEFENDANT denies the allegations contained therein.

COUNT ONE

35. Answering Paragraph 35 of Plaintiff's Complaint, DEFENDANT incorporates here by reference and realleges its answers to paragraphs 1 through 34 of Plaintiff's Complaint.

36. Answering Paragraph 36 of Plaintiff's Complaint, DEFENDANT is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and, on that basis, denies the allegations contained therein.

37. Answering Paragraph 37 of Plaintiff's Complaint, DEFENDANT denies the allegations contained therein.

38. Answering Paragraph 38 of Plaintiff's Complaint, DEFENDANT denies the allegations contained therein.

39. Answering Paragraph 39 of Plaintiff's Complaint, DEFENDANT

denies the allegations contained therein.

40. Answering Paragraph 40 of Plaintiff's Complaint, DEFENDANT is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and, on that basis, denies the allegations contained therein.

41. Answering Paragraph 41 of Plaintiff's Complaint, DEFENDANT denies the allegations contained therein.

42. Answering Paragraph 42 of Plaintiff's Complaint, DEFENDANT denies the allegations contained therein.

43. Answering Paragraph 43 of Plaintiff's Complaint, DEFENDANT denies the allegations contained therein.

44. Answering Paragraph 44 of Plaintiff's Complaint, DEFENDANT denies the allegations contained therein.

COUNT TWO

45. Answering Paragraph 45 of Plaintiff's Complaint, DEFENDANT incorporates here by reference and realleges its answers to paragraphs 1 through 44 of Plaintiff's Complaint.

46. Answering Paragraph 46 of Plaintiff's Complaint, DEFENDANT is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and, on that basis, denies the allegations contained therein.

47. Answering Paragraph 47 of Plaintiff's Complaint, DEFENDANT denies the allegations contained therein.

48. Answering Paragraph 48 of Plaintiff's Complaint, DEFENDANT denies the allegations contained therein.

49. Answering Paragraph 49 of Plaintiff's Complaint, DEFENDANT denies the allegations contained therein.

50. Answering Paragraph 50 of Plaintiff's Complaint, DEFENDANT is

without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and, on that basis, denies the allegations contained therein.

51. Answering Paragraph 51 of Plaintiff's Complaint, DEFENDANT denies the allegations contained therein.

52. Answering Paragraph 52 of Plaintiff's Complaint, DEFENDANT denies the allegations contained therein.

53. Answering Paragraph 53 of Plaintiff's Complaint, DEFENDANT denies the allegations contained therein.

54. Answering Paragraph 54 of Plaintiff's Complaint, DEFENDANT denies the allegations contained therein.

COUNT THREE

55. Answering Paragraph 55 of Plaintiff's Complaint, DEFENDANT incorporates here by reference and realleges its answers to paragraphs 1 through 54 of Plaintiff's Complaint.

56. Answering Paragraph 56 of Plaintiff's Complaint, DEFENDANT is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and, on that basis, denies the allegations contained therein.

57. Answering Paragraph 57 of Plaintiff's Complaint, DEFENDANT denies the allegations contained therein.

58. Answering Paragraph 58 of Plaintiff's Complaint, DEFENDANT denies the allegations contained therein.

59. Answering Paragraph 59 of Plaintiff's Complaint, DEFENDANT denies the allegations contained therein.

60. Answering Paragraph 60 of Plaintiff's Complaint, DEFENDANT is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and, on that basis, denies the allegations

contained therein.

61. Answering Paragraph 61 of Plaintiff's Complaint, DEFENDANT denies the allegations contained therein.

62. Answering Paragraph 62 of Plaintiff's Complaint, DEFENDANT denies the allegations contained therein.

63. Answering Paragraph 63 of Plaintiff's Complaint, DEFENDANT denies the allegations contained therein.

64. Answering Paragraph 64 of Plaintiff's Complaint, DEFENDANT denies the allegations contained therein.

COUNT FOUR

65. Answering Paragraph 65 of Plaintiff's Complaint, DEFENDANT incorporates here by reference and realleges its answers to paragraphs 1 through 64 of Plaintiff's Complaint.

66. Answering Paragraph 66 of Plaintiff's Complaint, DEFENDANT is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and, on that basis, denies the allegations contained therein.

67. Answering Paragraph 67 of Plaintiff's Complaint, DEFENDANT denies the allegations contained therein.

68. Answering Paragraph 68 of Plaintiff's Complaint, DEFENDANT denies the allegations contained therein.

69. Answering Paragraph 69 of Plaintiff's Complaint, DEFENDANT denies the allegations contained therein.

70. Answering Paragraph 70 of Plaintiff's Complaint, DEFENDANT is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and, on that basis, denies the allegations contained therein.

71. Answering Paragraph 71 of Plaintiff's Complaint, DEFENDANT

denies the allegations contained therein.

72. Answering Paragraph 72 of Plaintiff's Complaint, DEFENDANT, denies the allegations contained therein.

73. Answering Paragraph 73 of Plaintiff's Complaint, DEFENDANT denies the allegations contained therein.

74. Answering Paragraph 74 of Plaintiff's Complaint, DEFENDANT denies the allegations contained therein.

AFFIRMATIVE DEFENSES

1. As for a first, separate and distinct affirmative defense to the Complaint, and each and every count therein, DEFENDANT alleges that Complaint fails to state facts sufficient to constitute a cause of action against DEFENDANT.

2. As for a second, separate and distinct affirmative defense to the Complaint, and each and every count therein, DEFENDANT alleges that Plaintiff is barred by the Doctrine of Estoppel.

3. As for a third, separate and distinct affirmative defense to the Complaint, and each and every count therein, DEFENDANT allege that venue is improper.

4. As for a fourth, separate and distinct affirmative defense to the Complaint, and each and every count therein, DEFENDANT alleges that Plaintiff is barred by the Doctrine of Unclean Hands.

5. As for a fifth, separate and distinct affirmative defense to the Complaint, and each and every count therein, DEFENDANT alleges that Plaintiff is barred by the Doctrine of Waiver.

6. As for a sixth, separate and distinct affirmative defense to the Complaint, and each and every count therein, DEFENDANT alleges that, at all times and places mentioned herein, Plaintiff failed to mitigate the amount of damages. The damages claimed by Plaintiff could have been mitigated by due diligence on Plaintiff's part or by one acting under similar circumstances. The

failure to mitigate is a bar to recovery under the Complaint.

7. As for seventh, separate and distinct affirmative defense to the Complaint, and each and every count therein, DEFENDANT alleges that Plaintiff's actions are barred by an actual or implied license.

8. As for an eighth, separate and distinct affirmative defense to the Complaint, and each and every count therein, DEFENDANT alleges that each of the causes of action set forth in the Complaint is barred by the applicable statute of limitations found in 17 U.S.C. § 507.

9. As for a ninth, separate and distinct affirmative defense to the Complaint, and each and every count therein, DEFENDANT alleges that DEFENDANT's conduct was not the cause in fact or the proximate cause of any of the losses alleged by Plaintiff.

10. As for a tenth, separate and distinct affirmative defense to the Complaint, and each and every count therein, DEFENDANT alleges that the causes of action set forth in the Complaint are, and each of them is, barred in whole or in part by the privilege of fair competition.

11. As for an eleventh, separate and distinct affirmative defense to the Complaint, and each and every count therein, DEFENDANT alleges that this Court lacks venue.

12. As for a twelfth, separate and distinct affirmative defense to the Complaint, and each and every count therein, DEFENDANT alleges that the copyright applications alleged in the Complaint were improperly filed with the United State Copyright Office, if they were filed at all.

13. As for a thirteenth, separate and distinct affirmative defense to the Complaint, and each and every count therein, DEFENDANT alleges that Plaintiff's claims are barred as the works in question are in the public domain and have lost any copyright protection that they might have had.

14. As for a fourteenth, separate and distinct affirmative defense to the

Complaint, and each and every count therein, DEFENDANT alleges that Plaintiff's claims are barred by the First Sale Doctrine.

15. As for a fifteenth, separate and distinct affirmative defense to the Complaint, and each and every count therein, DEFENDANT alleges that DEFENDANT's actions fall within the Fair Use Doctrine, thereby invalidating the cause of action set forth in the Complaint.

16. As for a sixteenth, separate and distinct affirmative defense to the Complaint, and each and every count therein, DEFENDANT alleges that Plaintiff has abandoned its alleged rights in the asserted works of authorship.

17. As for a seventeenth, separate and distinct affirmative defense to the Complaint, and each and every count therein, DEFENDANT is informed and believes, and upon such basis alleges, that Plaintiff has not obtained any grant of rights from the copyright owner of the work(s) in question in this matter or third parties have superior rights to said work(s).

18. As for an eighteenth, separate and distinct affirmative defense to the Complaint, and each and every count therein, DEFENDANT alleges that Plaintiff's claims fail as Plaintiff's alleged copyrights are invalid because they seek protection for functional and/or utilitarian aspects of useful articles.

19. As for a nineteenth separate and distinct affirmative defense to the Complaint, and each and every count therein, DEFENDANT alleges that Plaintiff's claims fail as Plaintiff's alleged copyrights are invalid because the alleged works contain and/or constitute unprotectable subject matter, including, but not limited to, generic shapes, generic design elements and/or scenes a faire.

20. As for a twentieth, separate and distinct affirmative defense to the Complaint, and each and every count therein, DEFENDANTS allege that Plaintiff's Complaint fails to demonstrate the inadequacy of legal relief.

DEFENDANT has not completed its investigation of the allegations of Plaintiff's Complaint, and specifically reserves the right to amend its Answer and present additional affirmative defenses as necessary.

WHEREFORE, DEFENDANT prays for judgment as follows:

1. That Plaintiff's request for damages is denied;
2. That Plaintiff's request for injunctive relief is denied;
3. For reasonable attorney's fees and costs of suit incurred therein; and
4. For such other and further relief as the Court deems proper.

Dated: March 20, 2017

TINGLEY LAW GROUP, PC

By: /s/ Kevin W. Isaacson
KEVIN W. ISAACSON
Attorneys for Defendant

DEMAND FOR JURY TRIAL

DEFENDANT hereby demands a jury trial as provided by Rule 38(a) of the Federal Rules of Court.

Dated: March 20, 2017

TINGLEY LAW GROUP, PC

By: /s/ Kevin W. Isaacson
KEVIN W. ISAACSON
Attorneys for Defendant